

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

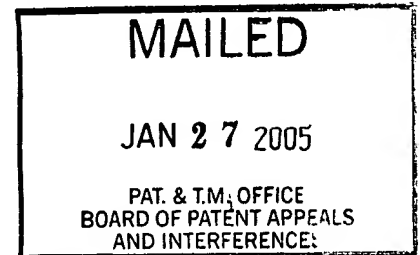
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADAM M. FELDSTEIN, SCOTT W. SEMYAN and MARK E. HICKLING

Appeal No. 2004-1416
Application No. 09/295,864

ON BRIEF



Before JERRY SMITH, RUGGIERO, and MACDONALD, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-32, which are all of the claims pending in the present application.

The disclosed invention relates to a method and system for enabling a user to quickly access personalized information which is specifically created and updated using network tracking techniques. Portions of the data are displayed as interactive data with client side processing, thereby allowing real time interaction and manipulation of the personalized data values.

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Representative claim 1 is reproduced as follows:

1. A computer-implemented method for displaying custom and personalized information on a client system comprising:

collecting data associated with a user;

processing the data to extract user characteristics to create unique user profiles and generate personalized information;

tracking at least a portion of the data and performing estimation calculations using the client to generate results and updated personalized information;

adjusting the results dynamically on the client by a user's interaction with the results; and

automatically communicating the results and the personalized and updated information to the user via the client.

The Examiner relies on the following prior art:

Gifford	4,845,658	Jul. 04, 1989
Wong	5,432,904	Jul. 11, 1995
Bull et al. (Bull)	5,901,287	May 04, 1999
		(filed Jul. 24, 1996)
Chapin, Jr. (Chapin)	5,931,878	Aug. 03, 1999
		(filed Aug. 09, 1996)

Claims 1-32, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Bull in view of Gifford with respect to claims 1-9, 12-22, 25-28, 30, and 32, adds Wong to the basic combination with respect to claims 10, 11, 23, 24, and 29, and adds Chapin to the basic combination with respect to claim 31.

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Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs¹ and the Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-32. Accordingly, we affirm.

¹ The Appeal Brief was filed October 29, 2003 (Paper No. 17). In response to the Examiner's Answer mailed January 8, 2004 (Paper No. 18), a Reply Brief was filed March 8, 2004 (Paper No. 19), which was acknowledged and entered by the Examiner in the communication dated March 17, 2004 (Paper No. 20).

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Appellants indicate (Brief, page 4) that the claims on appeal stand or fall together as a group. Consistent with this indication, Appellants' arguments are directed solely to features which are set forth in independent claim 1. Accordingly, we will select independent claim 1 as the representative claim for all the claims on appeal, and claims 2-32 will stand or fall with claim 1. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed waived [see 37 CFR § 41.37(c)(1)(vii)].

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986);

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In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to representative independent claim 1, Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. In particular, Appellants contend (Brief, pages 5-7; Reply Brief, pages 2-5) that, unlike the claimed invention in which a user interacts and adjusts results, the Gifford reference, relied on by the Examiner for the claimed results adjusting feature, interacts only with queries.

After careful review of the applied prior art references in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer. As described, for example, at column 6, lines 18-23 of Gifford, if the system determines that an initial query by a user will not find the desired information, the system suggests a query to the user. We fail to see why, as suggested by the Examiner (Answer, page 7), this system response to the user's initial query would not be considered a "result." Similarly, in our view, the user's

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response to the system by agreeing or disagreeing with the query suggestion (Gifford, Figure 6) corresponds to the feature of dynamically adjusting the result by interacting with the result as broadly claimed by Appellants.

In view of the above discussion, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of representative claims 1, as well as claims 2-32 which fall with claim 1, is sustained.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-32 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

AFFIRMED

Jerry Smith
JERRY SMITH

JERRY SMITH
Administrative Patent Judge

JOSEPH F. BUGG

JOSEPH F. RUGGIERO
Administrative Patent Judge


 ELLEN D. MCGONIGLE

ALLEN R. MACDONALD
Administrative Patent Judge

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